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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180220191-8945-02]

RIN 0648-BH80

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea

Bass Fisheries; Commercial Accountability Measures Framework Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing a commercial framework adjustment to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan that modifies the accountability measures required for overages not caused by directed landings (*i.e.*, discards) in the summer flounder, scup, and black sea bass fisheries. This adjustment incorporates the status of the stocks into the accountability measures. This action is intended to provide additional flexibility in determining when accountability measures are appropriate, similar to the method already used in the recreational fisheries for these species.

DATES: Effective [*insert date 30 days after date of publication in the Federal Register*].

ADDRESSES: Copies of this framework adjustment, including the Environmental Assessment (EA) and other supporting documents for the action, are available upon

request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org/actions/sfsbsb-commercial-am-framework>.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281-9180.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. This action implements a modification to the Federal accountability measures (AM) that are enacted when the commercial annual catch limit (ACL) is exceeded due to discards for any of these three species.

There are two types of commercial fishery AMs outlined in the summer flounder, scup, and black sea bass regulations. The first is a pound-for-pound overage repayment that is applied when the commercial quota is exceeded as a result of landings. This landings-based AM is not adjusted by this action. The second is a non-landings based AM that is applied to the commercial annual catch target (ACT) if the ACL has been exceeded, and the overage is not caused by landings, but rather by higher discards than those estimated prior to the fishing year. This action adjusts this non-landings-based AM

for the summer flounder, scup, and black sea bass fisheries to account for the variability in commercial discard estimates. This approach also provides additional flexibility to these AMs based on stock status and the biological consequences, if any, of estimated discard overages.

The proposed rule for this action published in the **Federal Register** on August 9, 2018 (83 FR 39398), and comments were accepted through September 10, 2018. We received nine comments from the public, but no changes to the final rule are necessary as a result of those comments. Additional background information regarding the development of this action can be found in the proposed rule, and is not repeated here.

Final Action

This action incorporates stock status into non-landings AMs determinations, as described in the proposed rule. When discards cause the commercial ACL to be exceeded, the following system will now be used to determine AMs:

- 1) If the current biomass is above the biomass target, no overage payback is required.
- 2) If the current biomass is above the biomass threshold (i.e., the stock is not overfished), but below the biomass target, and the stock is not under a rebuilding plan, then one of the following non-landings paybacks are applied:
 - a. If discards cause the commercial ACL, but not the acceptable biological catch (ABC), to be exceeded, no overage repayment is required; or

- b. If discards cause both the commercial ACL and ABC to be exceeded, a scaled, single-year adjustment to the commercial ACT will be made.

The adjustment would be scaled based on stock biomass, so that the adjustment is larger the closer the biomass is to the threshold.

- 3) If the stock is overfished, under a rebuilding plan, or the biological reference points (*i.e.*, stock status) are unknown, then a pound-for-pound payback is required for any non-landings overage.

The scaled payback required in scenario 2b above would be calculated as the product of the difference between the total catch and the ACL (*i.e.*, the overage amount) and a payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass target and the current biomass, divided by one half of the biomass target. This scaling is intended to minimize impacts of a payback for healthy stocks, while still accounting for the biological consequences of the overage. For more description of the scaled payback calculation, see the proposed rule for this action.

Comments and Responses

The public comment period for the proposed rule ended on September 10, 2018, and a total of nine comments were received from the public. Three comments from different industry groups all expressed support for the action as described in the proposed rule. Two comments outlined different perceptions of the current stock status, quotas, and commercial state-by-state allocations in the summer flounder fishery. These issues are not responsive to the specific measures in this action, but are currently under consideration by the Council in its ongoing development of summer flounder

specifications and the commercial summer flounder amendment. The other four comments received were not relevant to this action or these fisheries in general, and did not warrant a response in the context of the current rulemaking. No changes to the proposed rule will be made as a result of these comments.

Changes from the Proposed Rule

There are no substantive changes from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this

certification, and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 19, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.103, paragraph (b)(3) is revised to read as follows:

§ 648.103 Summer flounder accountability measures.

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(b) * * *

(3) *Non-landing accountability measure.* In the event that the commercial ACL is exceeded and that the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(i) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(ii) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(B) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY}-B$) divided by one-half of B_{MSY} .

(iii) *If biomass is above B_{MSY} .* If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

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3. In § 648.123, paragraph (b) is revised to read as follows:

§ 648.123 Scup accountability measures.

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(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(1) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(ii) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT

will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY}-B$) divided by one-half of B_{MSY} .

(3) *If biomass is above B_{MSY} .* If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

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4. In § 648.143, paragraph (b) is revised to read as follows:

§ 648.143 Black sea bass accountability measures

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(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(1) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold

(B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(ii) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY}-B$) divided by one-half of B_{MSY} .

(3) *If biomass is above B_{MSY} .* If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

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